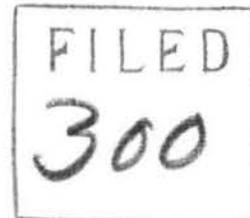


ELECTION: The requirement of Section 120.390 RSMo, "to
TIME: publish such notice for three consecutive
NOTICE: weeks next prior to said primary" is satis-
PUBLICATION: fied by three separate insertions, one in
each of three consecutive weeks, so that
the last insertion occurs at the latest on
the day next prior to the primary election,
and at the earliest on the second Sunday
next prior to the primary election.

OPINION NO. 300

June 23, 1966

Honorable David Thomas
Prosecuting Attorney
Carroll County
Carrollton, Missouri



Dear Mr. Thomas:

This is in answer to your request for an opinion of this office on the interpretation of Section 120.390 RSMo. You inquire whether four insertions are required in each newspaper in order to satisfy the publication of notice provision of the statute, or whether three would be sufficient.

Section 120.380 RSMo, states:

"At least eighty-five days before any primary preceding a general election, the secretary of state shall transmit to each county clerk a certified list containing the name and post office address of each person who shall have filed declaration papers in his office and entitled to be voted for at such primary, together with a designation of the office for which he is a candidate and the party or principle he represents.

Section 120.390 RSMo, states:

"Such clerks shall, upon receipt thereof, publish, under the proper party designation, the title of each office, the names and addresses of all persons who shall have filed declaration papers, giving the name and address of each, the date of the primary, the

Honorable David Thomas

hours during which the polls will be opened and that the primary will be held at the regular polling places in each precinct. It shall be the duty of the county clerk to publish such notice for three consecutive weeks next prior to said primary."

In *Russell v. Croy*, 164 Mo. 69, the Supreme Court had before it the interpretation of a constitutional provision which read in part, "Shall be published with the laws of the session at which they are proposed, and also in some newspaper, if such there be, in each county in the State for four consecutive weeks next preceding the general election then next ensuing..." Objection was made that the notice given occurred over a period of less than twenty-eight days. The court stated, l.c. 93,:

"The Constitution uses the words 'four consecutive weeks.' The word 'week' in its most accurate sense means seven consecutive days beginning with Sunday; in that sense it is most usually used. But it is also appropriately used to mean seven consecutive days beginning with any day. If we mark off the four weeks next preceding Tuesday, November the 6th, according to the first meaning of the word above given, then we would have the four weeks beginning each, Sunday October the 7th, 14th, 21st and 28th, and ending Saturday, November the 3d. Within that meaning of the word those are the particular four weeks specified by the Constitution during which in each the notice must be published once. If we mark them off on the calendar by periods of seven days, not regarding Sunday as the first of each, then we would have four weeks beginning each, Tuesday October the 9th, 16th, 23d and 30th, and ending Monday November the 5th, and within each of those periods there must be a publication. Whether we begin to count the week with Sunday or Tuesday, the four that we so mark off are the four which the Constitution calls for, and none other will satisfy. The record in this case shows that in each of those weeks, whether marked off by one rule or the other, there was a publication of the notice with one exception, that is, if we begin to count with Tuesday, October the 9th, there was no publication that week in Dallas county because the only paper in the county was issued on Monday alone."

The same interpretation applies to the notice provision of Section 120.390, *supra*. It requires that there must be a publication within each of the three weeks next preceding the election.

Honorable David Thomas

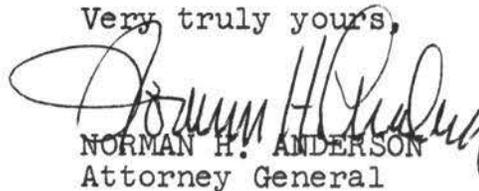
The last publication may be more or less than seven days before the election and the first may be more or less than twenty-one days prior thereto, within the defined limitation. The "weeks" involved herein may be regarded as beginning either on Sunday or on Tuesday. If each week is considered to begin on a Sunday, the earliest date for the last publication would be the second Sunday next prior to election day (the first day of the week prior to the week that includes election day). If we regard each week as beginning on Tuesday, the latest date for the last publication would be the last day of the week prior to the week that includes election day, which is the Monday next before election day (one day prior to election day).

CONCLUSION

It is, therefore, the opinion of this office that the requirement of Section 120.390 RSMo "to publish such notice for three consecutive weeks next prior to said primary" is satisfied by three separate insertions, one in each of three consecutive weeks, so that the last insertion occurs at the latest on the next day prior to the primary election, and at the earliest on the second Sunday next prior to the primary election.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Donald L. Randolph.

Very truly yours,



NORMAN H. ANDERSON
Attorney General